



Federal Communications Commission
Washington, D.C. 20554

DEC 29 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable John R. Kasich
U. S. House of Representatives
1131 Longworth House Office Building
Washington, D.C. 20515-3512

Dear Congressman Kasich:

Thank you for your letter dated November 21, 1997, on behalf of your constituent, Charles D. Underwood, City Attorney, Whitehall, Ohio, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

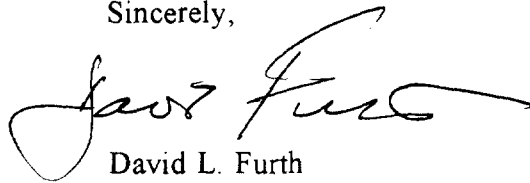
The Honorable John R. Kasich

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with a large initial "D" and a long, sweeping horizontal stroke at the end.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD
Dockets (2)
John Conwell
j:\congress\7769

JOHN R. KASICH

12TH DISTRICT, OHIO

MEMBER:
COMMITTEE ON NATIONAL SECURITY
COMMITTEE ON THE BUDGET
CHAIRMAN

Congress of the United States

House of Representatives

Washington, DC 20515-3512

November 21, 1997

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WTB
97-182
1763

Director, Congressional Affairs
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 60666

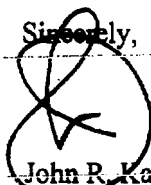
Dear Sir:

The attached communication concerns a request my constituent has forwarded to me which is under the jurisdiction of your office.

Please look into the statements contained within the attached documents and forward me the necessary information for reply. Please address your reply to my district office as listed above.

If you have any questions, please contact Mr. Mark Bell at 614-523-2555. Thank you for your time and attention to this matter, and I look forward to your reply.

Sincerely,



John R. Kasich

Representative to Congress

JRK/mb

enclosure



Charles D. Underwood
City Attorney

City Attorney
City of Whitehall
360 S. Yearling Road
Whitehall, Ohio 43213

(614) 237-9802
Fax (614) 237-9953

NOV 05 1997

Peter F.J. Beagle
Asst. City Attorney

October 30, 1997

The Honorable Mike Dewine
200 N. High Street
Columbus, Ohio 43215

and

The Honorable John Glenn
200 N. High Street
Columbus, Ohio 43215

and

The Honorable John R. Kasich
2700 E. Dublin-Granville Road
Columbus, Ohio 43231

Dear Sirs:

I am writing to you regarding the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell them to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. Congress told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

~~Cellular Towers - Radiation:~~ Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if

the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality, and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking, the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

Cellular Towers - Moratoria: Relatedly, the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

Radio/TV Towers: The FCC's proposed rule on radio and TV towers is as bad; it sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! All appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that has never seen a tower it did not like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani to tell them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter"

Copy List

Senator John McCain
241 SROB
Washington, DC 20510-0303

Representative James Moran
1214 LHOB
Washington, DC 20515-4608

Senator Conrad Burns
187 SROB
Washington, DC 20510-2603

Representative Bart Stupak
1410 LHOB
Washington, DC 20515-2201

Senator Kay Bailey Hutchison
283 SROB
Washington, DC 20510-4304

Representative Joe Barton
2264 RHOB
Washington, DC 20515-4306

Senator Slade Gorton
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Mr. Kevin McCarty
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Representative Bob Goodlatte
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Washington, DC 20515-4606

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